

## **Over 55 of the Nation's Leading Law Firms Respond to Investment Company Act Lawsuits Targeting the SPAC Industry**

August 30, 2021

Recently a purported shareholder of certain special purpose acquisition companies (SPACs) initiated derivative lawsuits asserting that the SPACs are investment companies under the Investment Company Act of 1940, because proceeds from their initial public offerings are invested in short-term treasuries and qualifying money market funds.

Under the provision of the 1940 Act relied upon in the lawsuits, an investment company is a company that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.

SPACs, however, are engaged primarily in identifying and consummating a business combination with one or more operating companies within a specified period of time. In connection with an initial business combination, SPAC investors may elect to remain invested in the combined company or get their money back. If a business combination is not completed in a specified period of time, investors also get their money back. Pending the earlier to occur of the completion of a business combination or the failure to complete a business combination within a specified timeframe, almost all of a SPAC's assets are held in a trust account and limited to short-term treasuries and qualifying money market funds.

Consistent with longstanding interpretations of the 1940 Act, and its plain statutory text, any company that temporarily holds short-term treasuries and qualifying money market funds while engaging in its primary business of seeking a business combination with one or more operating companies is not an investment company under the 1940 Act. As a result, more than 1,000 SPAC IPOs have been reviewed by the staff of the SEC over two decades and have not been deemed to be subject to the 1940 Act.

The undersigned law firms view the assertion that SPACs are investment companies as without factual or legal basis and believe that a SPAC is not an investment company under the 1940 Act if it (i) follows its stated business plan of seeking to identify and engage in a business combination with one or more operating companies within a specified period of time and (ii) holds short-term treasuries and qualifying money market funds in its trust account pending completion of its initial business combination.<sup>1</sup>

None of the firms subscribing to this document intends hereby to give legal advice to any person. Any person seeking legal advice should consult with an attorney.

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<sup>1</sup> Certain of these lawsuits also claim that personnel of the SPAC sponsor are acting as unregistered investment advisers under the Investment Advisers Act of 1940 by advising on the SPAC business combination (which the plaintiff incorrectly asserts constitutes advice as to investing in, purchasing, or selling securities). The law firms listed herein also view this claim as without legal basis and do not believe that such personnel or the SPAC sponsor are unregistered investment advisers.

Akin Gump Strauss Hauer & Feld LLP  
Arnold & Porter  
Baker & McKenzie LLP  
Baker Botts LLP  
Blank Rome LLP  
Cadwalader, Wickersham & Taft LLP  
Cleary Gottlieb Steen & Hamilton LLP  
Clifford Chance US LLP  
Cooley LLP  
Covington & Burling LLP  
Cravath, Swaine & Moore LLP  
Crowell & Moring LLP  
Davis Polk & Wardwell LLP  
Debevoise & Plimpton LLP  
DLA Piper LLP (US)  
Ellenoff Grossman & Schole LLP  
Eversheds Sutherland (US) LLP  
Fenwick & West LLP  
Freshfields Bruckhaus Deringer US LLP  
Fried, Frank, Harris, Shriver & Jacobson LLP  
Gibson, Dunn & Crutcher LLP  
Goodwin Procter LLP  
Graubard Miller  
Greenberg Traurig, LLP  
Hogan Lovells US LLP  
Hughes Hubbard & Reed LLP  
Katten Muchin Rosenman LLP  
King & Spalding LLP  
Kirkland & Ellis LLP

Kramer Levin Naftalis & Frankel LLP  
Latham & Watkins LLP  
Loeb & Loeb LLP  
Mayer Brown LLP  
McDermott Will & Emery LLP  
Milbank LLP  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
Morgan, Lewis & Bockius LLP  
Nelson Mullins Riley & Scarborough LLP  
Orrick, Herrington & Sutcliffe LLP  
Paul Hastings LLP  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
Perkins Coie LLP  
Proskauer Rose LLP  
Reed Smith LLP  
Ropes & Gray LLP  
Schiff Hardin LLP  
Shearman & Sterling LLP  
Sidley Austin LLP  
Simpson Thacher & Bartlett LLP  
Skadden, Arps, Slate, Meagher & Flom LLP  
Sullivan & Cromwell LLP  
Vinson & Elkins LLP  
Wachtell, Lipton, Rosen & Katz  
Weil, Gotshal & Manges LLP  
White & Case LLP  
Willkie Farr & Gallagher LLP  
Wilmer Cutler Pickering Hale and Dorr LLP  
Winston & Strawn LLP